



U.S. Department  
of Transportation

400 Seventh St. S.W.  
Washington, D.C. 20590

**Pipeline and Hazardous  
Materials Safety Administration**

Chief Counsel

AUG - 2 2006

John R. Mietus, Jr.  
DLA Piper Rudnick Gray Cary US LLP  
1200 Nineteenth Street, NW  
Washington, DC 20036-2412

Re: Request for Reconsideration of Letter Ref. No. 05-1053

Dear Mr. Mietus:

This responds to your May 3, 2006 letter requesting reconsideration, on behalf of NationsRent, Inc., of a July 29, 2005 interpretation letter, Ref. No. 05-0153, issued by the Pipeline and Hazardous Materials Safety Administration of the Department of Transportation (DOT). The July 29, 2005 letter responded to a request for interpretation from the California Highway Patrol regarding the application of certain labeling and placarding provisions of the Hazardous Materials Regulations (HMR), 49 C.F.R. §§ 172.401(b) and 172.502(a)(2), to the display of four different NationsRent logos. Your letter enclosed copies of each of the logos, along with photographs of their use on rental equipment owned by NationsRent.

49 C.F.R. § 172.401(b) provides that “[n]o person may offer for transportation and no carrier may transport a package bearing any marking or label which by its color, design or shape could be confused with or conflict with a label prescribed under this part.” Similarly, under 49 C.F.R. § 172.502(a)(2) “[a]ny sign, advertisement, slogan . . . or device that, by its color, design, shape or content, could be confused with any placard prescribed in this subpart” may not be affixed or displayed on “a packaging, freight container, unit load device, motor vehicle or rail car.” The July 29, 2005 letter opined that the four NationsRent logos presented with the request for interpretation could be confused with a DOT label or placard and are therefore “prohibited.”

We appreciate the opportunity to review the HMR interpretation underlying the July 29, 2005 opinion and to clarify this agency’s position concerning enforcement of §§ 172.401(b) and 172.502(a)(2). PHMSA does not regulate trademarks or prohibit the commercial use of particular designs. The regulations at issue apply only to the display of designs in specified transportation contexts, specifically, to the use of labels on packages in, or offered for, transportation (49 C.F.R. § 172.401(b)) and designs displayed on a packaging, unit load device, motor vehicle or rail car (49 C.F.R. § 172.502(a)(2)).

Where applicable, the prohibitions in §§ 172.401(b) and 172.502(a)(2) should be interpreted and enforced in accordance with their regulatory purpose. As explained in the July 29, 2005

letter, the rules are intended to preserve the effectiveness of DOT's hazard warning communication system by preventing dilution of the distinctive hazmat labels and placards mandated under our regulations. DOT-prescribed labels and placards are designed to facilitate the immediate and reliable communication of information concerning the nature and quantity of hazardous materials moved in transportation, so that carrier personnel, law enforcement officials, and first responders know to take appropriate precautions in transportation handling, law enforcement, and emergency response situations. Ultimately, the hazard communication system is only as effective as the ability of these individuals to identify and distinguish among designs. Accordingly, we cannot tolerate the use in transportation of designs and logos that are confusingly similar to hazmat labels or placards.

In accordance with this purpose, the regulations at issue should be strictly enforced against the use in transportation of designs or logos that are intended to mimic hazmat labels or placards. In such cases, we have not been receptive to contentions that particular differences in design or wording counteract any confusion that could be caused by the deliberate imitation of a DOT hazard warning.

In all other cases, the likelihood of confusion must be considered in context, and categorical declarations that particular designs are prohibited in transportation are rarely justified. In applying that standard, we intend to give deference to the perspective of first responders, whose accurate and decisive decision-making we are attempting to protect. We would be very reluctant to second-guess a law enforcement determination that a particular sign or logo is being used in transportation in a manner that poses an unreasonable risk of confusion in hazard warning communications. On the other hand, we will not assume that a particular design or logo poses an unreasonable risk of confusion simply because it bears design elements – for instance, a square-on-point or diamond shape – similar to a hazmat label or placard. Rather, the analysis must focus on the likelihood that, in context, the sign, logo, or advertisement could cause confusion to individuals who are expected to identify and act on the basis of DOT hazmat labels and placards. It is not reasonable to assume that such confusion will result simply because a logo includes design elements similar to a DOT hazard communication. The carrier personnel and first responders whose decision-making must be protected are trained to identify and distinguish among 24 different placard designs (and 28 different labeling designs), all of which include similar design elements.

Nothing in the record of this case suggests that NationsRent has attempted to pattern its logos after a hazmat placard, and we know of no evidence that NationsRent's signs or logos have caused actual confusion in transportation or that NationsRent has used its logos in a manner that law enforcement officials have determined poses an undue risk of confusion. Rather, some or all of the enforcement activity appears to be based on the misunderstanding that a blanket prohibition is warranted or compelled under our regulations because the depicted logos bear certain design elements similar to DOT hazard communication designs.

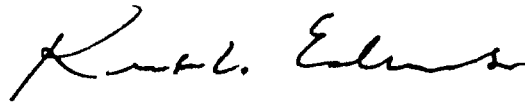
Upon further review, we reverse our earlier interpretation to the extent that it suggested that use of any of the depicted NationsRent designs is categorically prohibited by 49 C.F.R. § 172.401(b) or § 172.502(a)(2). You have represented, and it appears clear on the face of the designs, that they are not intended to mimic hazmat labels or placards. Further, nothing in the record suggests that they are being displayed at or near the points on vehicles where hazmat labels or placards are displayed or that the particular transportation context has contributed to

confusion. To the contrary, it appears that the designs have been displayed at places – the outside of vehicle doors and on the sides of rental equipment – where business logos, and not hazard communications, are commonly displayed. In these circumstances, the fact that the logos include some of the same basic design elements as certain hazmat placards is not alone a sufficient basis for prohibiting their use in transportation.

This opinion is based on the record before us and, in particular, the appearance and context of the depicted logos. We caution NationsRent to use care in the sizing and placement of its logos in order to avoid any possibility of confusion with a hazmat label or placard.

As guidance, we are sending a copy of this letter to the California Highway Patrol, the Federal Motor Carrier Safety Administration (FMCSA) and FMCSA's state partners in the Motor Carrier Safety Assistance Program (MCSAP).

Sincerely,

A handwritten signature in black ink, appearing to read "Krista L. Edwards". The signature is fluid and cursive, with the first name "Krista" being more prominent than the last name "Edwards".

Krista L. Edwards



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May 3, 2006

BY HAND

Hon. Brigham McCown  
Acting Administrator  
Pipeline and Hazardous Materials Safety Administration  
400 Seventh Street, SW, Suite 8410 (PH-2)  
Washington, DC 20590

Re: Request for Reconsideration of Letter Ref. No. 05-1053

Dear Mr. McCown:

By letter dated July 29, 2005, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") responded to a California Highway Patrol inquiry concerning the application of sections 172.401(b) and 172.502(a)(2) of the Hazardous Materials Regulations ("HMRs") to elements of logos displayed by our client, NationsRent, on its rental equipment. We appreciate the opportunity that you afforded us on April 3, 2006 to meet with you and key PHMSA officials and staff. We've enclosed a copy of the meeting presentation that we used in our discussion with you.

NationsRent recognizes and respects the role that the HMRs play in helping to ensure transportation safety. But as we discussed during the meeting, the company is concerned that the letter could be interpreted to limit NationsRent's ability to display its longstanding logo even in contexts where the sections cited above do not apply -- for example, when displayed on equipment such as aerial platforms -- or where the logo would not be confusingly similar, especially when it is combined with other design or text elements.

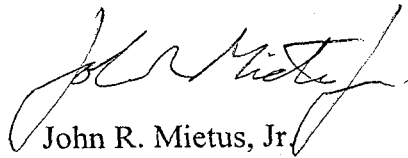
Hon. Brigham McCown

May 3, 2006

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For the reasons set forth in the presentation and during our meeting, NationsRent respectfully requests that PHMSA reconsider its position in Ref. No. 05-1053 and issue written guidance that more specifically addresses the application of sections 172.401(b) and 172.502(a)(2) to the NationsRent logo.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Mietus, Jr.", written in a cursive style.

John R. Mietus, Jr.  
Ryan Compton  
Counsel for NationsRent

Enclosure

# NationsRent Branding on Equipment Is Consistent with HMR Placarding Restrictions

John Mietus

Ryan Compton

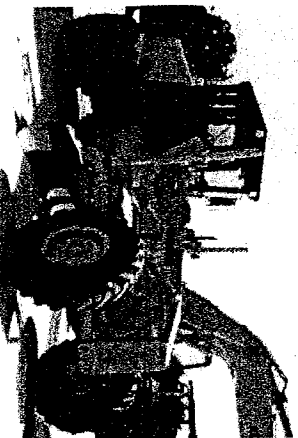
DLA Piper Rudnick Gray Cary US LLP

April 3, 2006



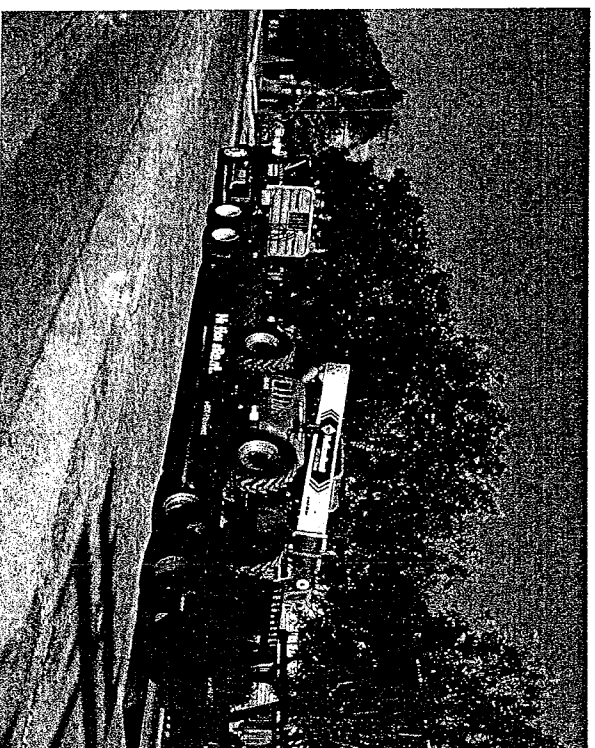
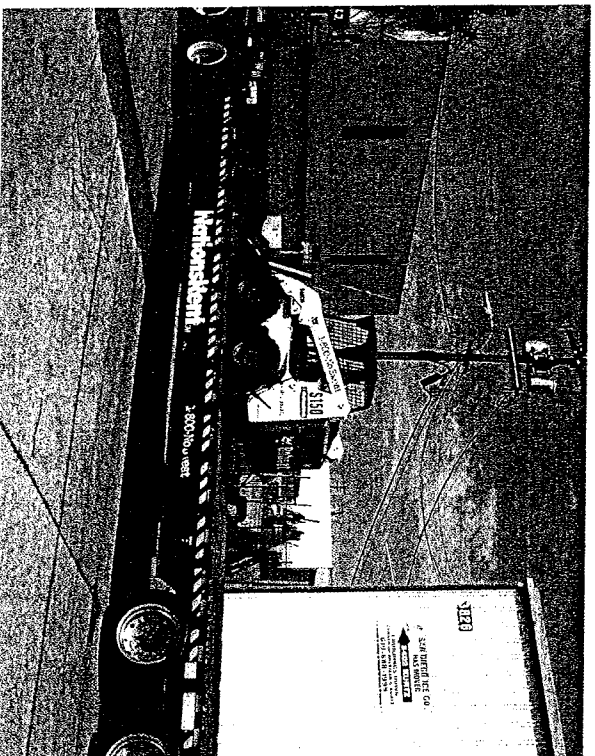
# NationsRent Supplies Familiar, Portable Construction Equipment

- Ranked 6<sup>th</sup> largest US equipment rental company by Rental Equipment Register
- 267 locations in 26 states nationwide (including Lowe's Home Improvement Centers)
- Over 100,000 items of more than 600 types, with an acquisition cost of \$1.1 billion



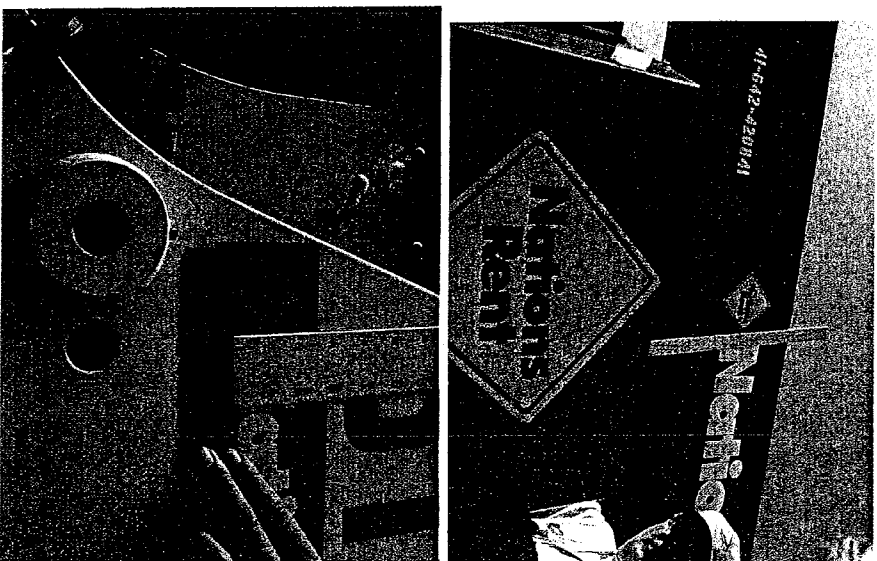
# NationsRent Vehicles Transport Equipment Between Yards and Job Sites

- Ranked among the top 100 private fleets by Fleet Owners Magazine
- Almost 1500 drivers subject to the FMCSRs, 729 with CDLs
- 1400 trucks (303 IRP-plated) and 453 trailers
- Three operating motor carriers with strong safety records (DOT 813891, 908638, and 920751)





# Some NationsRent Branding Includes a Diamond-Shaped Logo



# The Diamond Logo Echoes Familiar Road Signs Rather Than Hazmat Placards

- Its simple, two-word message contrasts with the word, class number, and graphic information displayed on placards and labels.
- Its color is the common yellow shade used on highway warning signs; it resembles none of the standard hazmat placard colors.

Figure 30-4. Roadway Condition and Advance Traffic Control Signs



# The HMR Prohibition on Confusing Markings

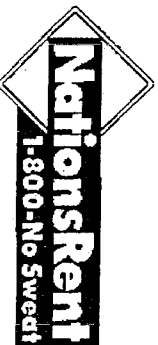
## Addresses Vehicles and Packagings

- 172.401(b): [No] carrier may transport a package bearing any marking or label which by its color, design, or shape could be confused with or conflict with a label....
- 172.502(a)(2): [No] person may affix or display on a packaging, freight container, unit load device, motor vehicle or rail car. . . any sign, advertisement, slogan (such as "Drive Safely"), or device that, by its color, design, shape or content, could be confused with any placard....

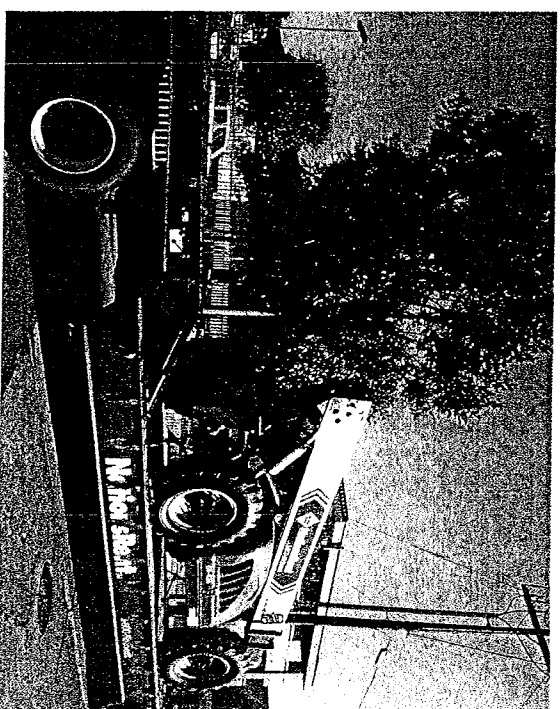
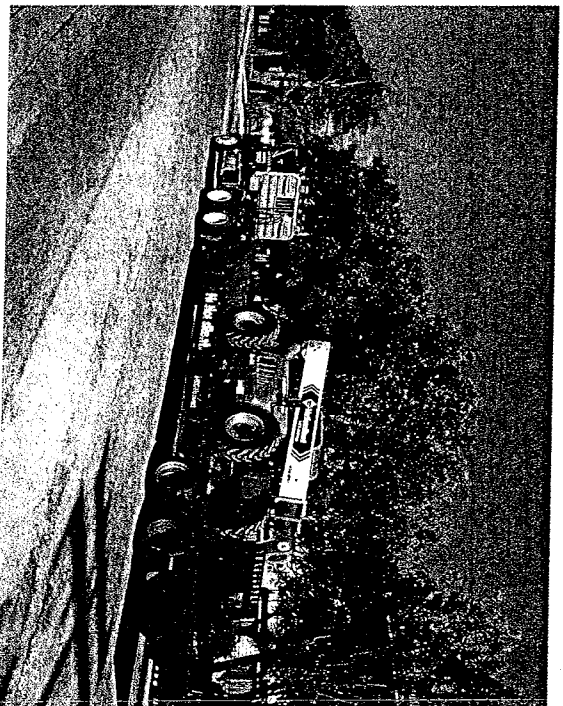
(emphasis added)

# NationsRent Road Vehicles Do Not Display the Diamond Logo

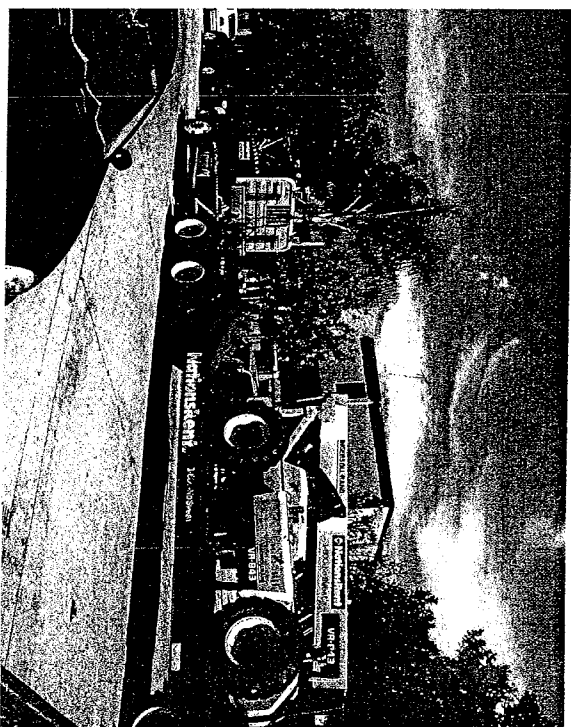
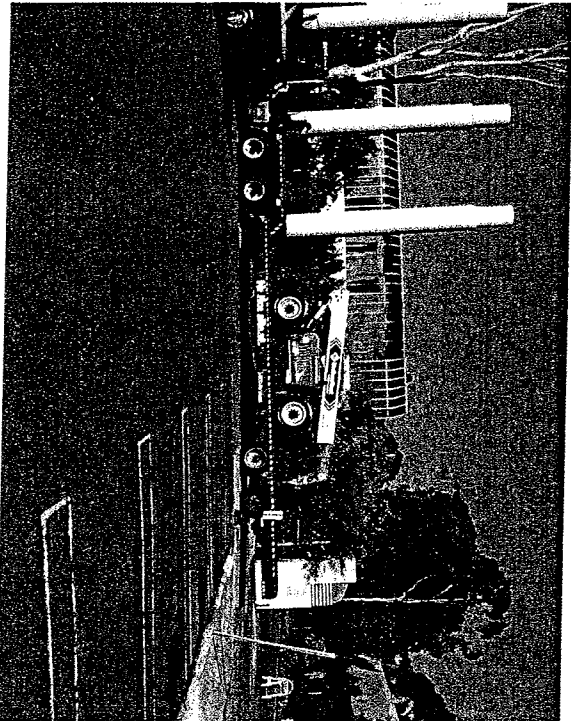
- In 2000 NationsRent considered addressing concerns over a solitary diamond logo on vehicles with a special logo accepted by RSPA:



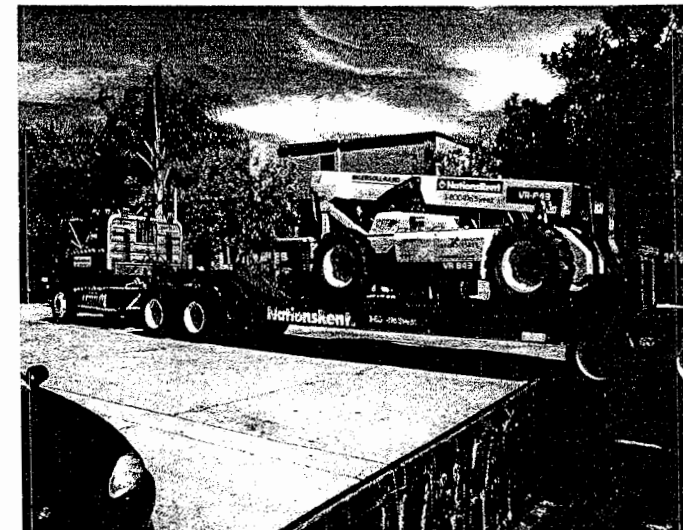
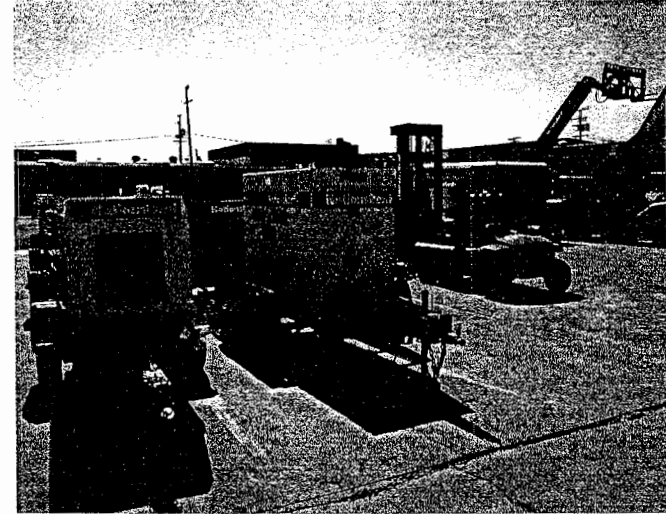
- However, NationsRent now has removed the diamond logo from vehicles in its transportation fleet.



# NationsRent Road Vehicles Do Not Display the Diamond Logo



# NationsRent Equipment Generally Displays The Diamond Logo With Other Design Elements



# Equipment Is Readily Distinguished From Vehicles and Packagings That May Carry Hazmats

